NOV 20 2003

No. 03-524

In the

Supreme Court of the United States

WILBERT SKIPPER, JR.; MELVYN CONNOR; WILLIAM INGRAM; DAVID NEWMAN; ANTHONY BLOCKER; MAURICE MATHEWS; W. KIRB QUALLS, JR.; JOHN W. DALLAS, JR. and DAVID JONES;

Petitioners,

v.

GIANT FOOD INCORPORATED; PETER MANOS, in his official capacity; SAMUEL THURSTON, in his official capacity; MARIA MYERS, in her official capacity; ROBERT HAYWOOD, in his official capacity; DEBORAH LILLY, in her official capacity; TOM MAYNARD, in his official capacity and CHRIS BALLADEMAS, in his official capacity,

Respondents.

On Petition for a Writ of Certiorari to the The Court of Appeals for the Fourth Circuit

REPLY BRIEF

Marina Tramontozzi
Counsel of Record
c/o Jo Ann P. Myles
1300 Mercantile Lane
Largo, MD 20774
(301) 474-0261
Attorneys for Petitioners

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 223-3160 ♦ USSCINFO.COM

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT 1

I. PETITIONERS HAVE STANDING 2

II. EMPLOYER'S SUMMARY JUDGMENT MOTIONS SHOULD NOT BE RULED UPON PRIOR TO RULING ON CLASS CERTIFICATION 4

III. AN EVIDENTIARY HEARING SHOULD BE HELD BEFORE DENIAL OF CLASS CERTIFICATION 6

IV. PETITIONERS' APPEALS WERE PREMATURE 7

CONCLUSION 9

APPENDIX

MOTION TO ALTER, AMEND AND TO STAY THE DISTRICT COURT'S ORDER DATED MARCH 25, 2002 CONCERNING PLAINTIFF'S CONSOLIDATED NOTICE OF APPEAL 1a

EXCERPT OF DOCKET ENTRIES 9a

CIRCUIT COURT ORDER (5/28/200) 21a

TABLE OF AUTHORITIES

CASES

ANDERSON V. CITY OF ALBUQUERQUE, 690 F.2D 796, 29 FEP 1689 (10TH CIR. 1982) 6

CATLIN V. UNITED STATES, 324 U.S. 229, 233, 65 S.CT. 631, 633-34, 89 L.ED. 911 (1945) 8

CONLEY V. GIBSON, 355 U.S. 41, 48, 78 S.CT. 99, 103, 2 L.ED.2D 80 8

EISEN V. CALISLE & JACQUELINE, 417 U.S.156,177, 9 FEP 1302 5

FORMAN V. DAVIS, 83 S.CT 227(1962) 9

GENERAL TELEPHONE CO. V. FALCON, 457 U.S. 147, 28 FEP 1745 (1982) 6

GUERINE V. J & W INVESTMENT, INC., 544 F.2D 863 (5TH CIR. 1977) 7

KIRKPATRICK V. J.C. BRADFORD & CO., 827 F.2D 718 (11TH CIR. 1987), CERT. DENIED, 485 U.S. 959 (1988) 6

LILLY V. HARRIS -TEETER SUPERMARKET, 720 F.2D 326, 33 FEP 195 (4TH CIR. 1983) 6, 7

MILLER V. MACKEY INTERNATIONAL, 452 F.2D 424 (CA5 1971) 5

ROSS V. BANK SOUTH, N.A., 837 F.2D 980 (1LTH CIR. 1988) 5

SHEPARD V. BEAIRD-POUAN, INC. 617 F.2D 87, 22 FEP 1735 (5TH CIR. 1980).....7

SHORES V. SKLAR , 844 F.2D 1485 (11TH CIR. 1988) 5

WOODWORKERS V. GEORGIA-PACIFIC CORP., 568 F.2D 64, 16 FEP 258 (8TH CIR. 1983).....7

STATEMENT

Petitioners urge the United States Supreme Court to hear their case because the case presents issues of law: (1) that show a serious conflict with this court and among the other federal circuits; (2) it raises serious public policy concerns and (3) it raises constitutional issues as to how the Federal Courts apply Rule 23 in the certification of civil rights class actions.

As a preliminary matter, the respondents opposition does not oppose petitioners' questions presented to the United States Supreme Court. Moreover respondents failed to show candor and honesty with this Court about the procedural posture of the record below. First and foremost, petitioners ' March 19, 2002 notice of appeal and April 8, 2002 supplemental notice of appeal were filed "prematurely". Neither of the two appeals had any force or effect until May 25, 2003, one day after all defendants had been dismissed from *Carson et. al. v. Giant Food Inc. et. al.* JFM 92-2882. Fed. R. Civ. P. 54(b).[1] This crucial fact was omitted in respondents' opposition.

The posture of petitioners' March 19, 2002 notice of appeal" and April 8, 2002 supplemental notice of appeal are in dispute. On March 25, 2002 , the district court characterized petitioners' March 19, 2002 appeal of its February 20, 2002 order as an "interlocutory appeal". (Ret. Br. App. 11a, Docket Entries 318-319)

---

[1] Petitioners' April 8, 2003 supplemental notice of appeal was filed with the April 2, 2002 order attached. (Pet. App. 196a-198a) and (SJA. 10a-12a)

The district court's February 20, 2002 order was confusing. (Pet. App. 14a). In the order, the court dismisses 10 of the 11 plaintiffs leaving only plaintiff Gregory Carson's "hostile work environment" claim. (Pet. App. 15a and 37a-51a) Realizing the appeals were premature, on April 8, 2003 petitioners filed two motions to stay, one in the district court and one in the court of appeals. Petitioners filed a motion to stay in district court to prevent the record from going forward to the Fourth Circuit until after Carson's claims had been adjudicated. (Ret. Br. App. 1a-8a) The motion was granted. (Ret. Br. App. 16a Docket Entry 334) On May 24, 2002, Carson settled and all remaining defendants were dismissed. The parties informed this fact to the Fourth Circuit who then denied petitioners' motion to stay on May 29, 2002. (Ret. App. 21a) Petitioners "premature' notice of appeal and supplemental notice of appeal were cured. The appeals took affect one day after 5/24/02 when Carson's case was settled and dismissed in the district court. (Ret. Br. App. 19a, Docket Entry 348)

I. PETITIONERS HAVE STANDING

Respondents' contentions that petitioners have no standing to bring this writ of certiorari are totally without merit. Respondents contend that petitioners have not petitioned this court to review the dismissal of their individual claims. Clearly based on the questions presented to this court, petitioners have sought review of the dismissal of their individual claims. Furthermore, the cases cited by respondents to support their position are actually distinguishable from this matter because petitioners in their complaint alleged detailed allegations of the wrongs they suffered. They alleged

how those wrongs and injuries were similar if not the same as the putative class. Both petitioners and the putative class made claims of being subjected to hanging nooses, segregated locker rooms, the posting of pictures of apes and monkeys with African American employees names posted, having managers and co-workers daily call them 'nigger" and being subjected daily to numerous racial graffiti. The district court agreed. Judge Motz opined in his order that:

> "The record before me clearly demonstrates that racial hostility existed between African-Americans workers and white workers at the Giant warehouses from 1980 to the time this suit was initiated in 1996. On at least four occasions, nooses were displayed in the warehouses. n13 Likewise, racist graffiti written on the walls of the trailers used to transport products from the warehouses to Giant's retail stores was a constant problem Finally, there is evidence that managers and supervisors used racist epithets and made other racially offensive remarks." (Pet. App. 23a).

The district court confirmed the allegations in petitioners' complaint as to a racially hostile environment but refused to certify a class in the warehouses.

II. EMPLOYER'S SUMMARY JUDGMENT MOTIONS SHOULD NOT BE RULED UPON PRIOR TO RULING ON CLASS CERTIFICATION.

Petitioners repeated attempts to have the district court rule on their motion for class certification first and to give them an evidentiary hearing was futile. That court insisted on ruling on Giant Food Inc.'s ("Giant") motions for summary judgment first before considering petitioners' motion for class certification. This identical issue is still pending in the *Muhammad* class action.[2] What is necessary are uniformed standards by which all courts must apply Rule 23 to civil rights class actions.

Lastly, at the March 2001 motions' hearing Judge Motz adopted Giant's proposed scheduling order. Contrary to respondents' allegations in its opposition, it was plaintiff Jerry Mungro's counsel, who is not involved in this petition who requested changing Giant's proposed filing dates. Judge Motz changed the schedule to accommodate Mungro's counsel. Petitioners' counsel objected to the change in the schedule if it meant that the district court was going to rule on Giant's motions for summary judgment prior to ruling on Plaintiffs motion for class certification. Judge Motz ruled on Giant's motions' for summary judgment prior to ruling on petitioners' motion for class certification based on his references in his opinion denying class certification to facts, issues and or events that related to Giant's motions for summary judgment.

---

[2] The *Muhammad et. al. v. Giant Food. Inc. al.* Nos. 01-1031-10336 cases were appealed in November 2000. The cases are still pending.

(Pet. App. 14a-51a) What is crystal clear is that Judge Motz entered scheduling orders in direct violation of Rule 23. As the Supreme Court ruled in *Eisen v. Calisle & Jacqueline*, 417 U.S.156,177, 9 FEP 1302 (1974:

> We find nothing in either the language or history of Rule 23 that Gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action. Indeed, such a procedure contravene the Rule by Allowing a representative plaintiff to secure the benefits of a class action without first satisfying the requirements for it....In short, we agree with Judge Wisdom's conclusion in *Miller v. Mackey International*, 452 F.2d 424 (CA5 1971), where the court rejected a Preliminary Inquiry into the merits of a proposed class action :"in determining the propriety of a class action, the question is not whether the Plaintiff have stated a cause of action or prevail on the merits, but rather the requirements of Rule 23 are met. *Id* at 427.

This Supreme Court ruling generally is still the state of the law.[3] All class action litigants are entitled to a fair

---

[3] *Accord Shores v. Sklar* , 844 F.2d 1485 (11th Cir. 1988) (assessment of the plaintiff's likelihood of success on the merits was an improper basis for denial of class certification); *Ross v. Bank South, N.A.*, 837 F.2d 980 (11th Cir. 1988); *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718 (11th Cir. 1987), cert. Denied, 485

process and management schedule. Holding civil rights class actions to a higher, stricter and heightened standard than non-discrimination cases is in clear violation of the United States Constitution and the Civil Rights Act of 1964, Amended.

III. AN EVIDENTIARY HEARING SHOULD BE HELD BEFORE DENIAL OF CLASS CERTIFICATION

Contrary to respondents' opposition there is a serious conflict among the circuits as to whether or not an "evidentiary hearing" should be held prior to a denial of class certification. The Supreme Court has held that a "Court should perform a vigorous analysis of the Prerequisites of Rule 23(a) to see if they are satisfied. *General Telephone Co. v. Falcon*, 457 U.S. 147, 28 FEP 1745 (1982)." This has consistently remained the state of the law. In he Fourth Circuit's case of *Lilly v. Harris -Teeter Supermarket*, 720 F.2d 326, 33 FEP 195 (4th Cir. 1983), the Fourth Circuit affirmed certification of a class of those alleging discrimination in discharges and promotions. Specifically, the Fourth Circuit in *Lilly v. Harris-Teeter* held that:

> "...plaintiffs need not, at the time of the motion for class certification. demonstrate by statistical evidence that blacks have been terminated At a higher rate than have whites, or any other differential. Certification is only concerned with the

---

U.S. 959 (1988); *Anderson v. City of Albuquerque*, 690 F.2d 796, 29 FEP 1689 (10th Cir. 1982).

> commonality (not the apparent merit) of the claims and the existence of sufficiently numerous groups of persons who may assert those claims." 720 F.2d at 332-33.

However, the Fourth Circuit panel in this matter ignored both the holdings in *General Telephone Co. v. Falcon* and *Lilly v. Harris Teeter*. This case was not one free from doubt. Every aspect, fact or proposed fact was disputed and in controversy. Petitioners' request for an "evidentiary hearing" was consistently denied. There have been a number of courts in other circuits that have held that an "evidentiary hearing" should be held prior to any denial of class certification. *Guerine v. J & W Investment, Inc.*, 544 F.2d 863 (5th Cir. 1977) and *Shepard v. Beaird-Pouan, Inc.* 617 F.2d 87, 22 FEP 1735 (5th Cir. 1980) and *Woodworkers v. Georgia-Pacific Corp.*, 568 F.2d 64, 16 FEP 258 (8th Cir. 1983).

IV. PETITIONERS' APPEALS WERE PREMATURE

Contrary to respondents' opposition. the petitioners' March 19, 2002 notice of appeal and April 8, 2002 supplemental notice of appeal of the district court orders dated February 20, 2002 and April 2, 2002 were "premature". The appeals did not have any force and effect until May 25, 2002, one day after lead Plaintiff Gregory Carson settled and dismissed his case. (Rep. Br. App. 20a, Docket Entry 348)

Because petitioners filed a consolidated case with originally 11, plaintiffs, the petitioners were not entitled to take an appeal until the last defendants were

dismissed. However, Judge Motz's February 20, 2002 order was confusing in that in his opinion he separated all 11 of the plaintiffs and opened up new cases for each one. (Pet. App. 52a-53a) Petitioners filed unknowingly two premature appeal notices. *Catlin v. United States*, 324 U.S. 229, 233, 65 S.Ct. 631, 633-34, 89 L.Ed. 911 (1945) (citation omitted). Carson's one claim was still outstanding on February 20, 2002. The orders appealed were not appealable until after the final adjudication of Carson's "hostile environment" claim. Fed. R. Civ. 54(b).

Any defect in the first or second notices of appeal did not mislead or prejudice the respondents. In reviewing the two notices together it is clear that petitioners sought review of the dismissal of their claims and the denial of full sanctions. Both parties briefed the sanctions order issue and argued the merits of the sanctions issue at oral argument on May 9, 2003. It is too late and "contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of mere technicalities". The April 2, 2002 order was timely appealed and should have been addressed by the Fourth Circuit. The Supreme Court has held that:

> "The Federal Rules reject the approach that pleading is a game of Skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80. The Rules themselves provide that they are to be construed 'to

secure the just, speedy, and inexpensive determination of every action.' Rule 1." *Forman v. Davis*, 83 S.Ct 227(1962)

Therefore the Fourth Circuit had jurisdiction to review and decide all issues raised concerning the district court's April 2, 2002 order.

CONCLUSION

Wherefore petitioners pray that this Court grant their Petition for a Writ of Certiorari or in the alternative vacate the Fourth Circuit's June 11, 2003 decision and remand the case back with specific appropriate instructions.

Respectfully submitted,

Marina Tramontozzi
Counsel of Record
c/o Jo Ann P. Myles
1300 Mercantile Lane
Largo, MD 20774
(301) 474-0261
Attorneys for Petitioners

(Any footnotes trail end of each document)

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF MARYLAND

Civil Action No. JFM-96-2882

GREGORY CARSON, et al.,
Plaintiff,

v.

GIANT FOOD INC., et al.,
Defendants.

Civil Action No. JFM-02-537

WILBERT SKIPPER, JR.,
Plaintiff,

v.

GIANT FOOD INC., et al.,
Defendants.

Civil Action No. JFM-02-538

MELVYN CONNOR,
Plaintiff,

v.

GIANT FOOD INC., et al.,
Defendants.

Civil Action No. JFM-02-539

WILLIAM INGRAM,
Plaintiff,

v.

GIANT FOOD INC., et al.,
Defendants.

Civil Action No. JFM-02-540

DAVID NEWMAN,
Plaintiff,

v.

GIANT FOOD INC., et al.,
Defendants.

Civil Action No. JFM-02-541

ANTHONY BLOCKER,
Plaintiff,

v.

GIANT FOOD INC., et al.,
Defendants.

Civil Action No. JFM-02-542

MAURICE MATHEWS,
Plaintiff,

v.

GIANT FOOD INC., et al.,
Defendants.

Civil Action No. JFM-02-543

W. KIRB QUALLS, JR.,
Plaintiff,

v.

GIANT FOOD INC., et al.,
Defendants.

Civil Action No. JFM-02-544

JOHN DALLAS, JR. and DAVID JONES,
Plaintiffs,

v.

GIANT FOOD INC., et al.,
Defendants.

MOTION TO ALTER, AMEND AND TO STAY THE DISTRICT COURT'S ORDER DATED MARCH 25, 2002 CONCERNING PLAINTIFFS' CONSOLIDATED NOTICE OF APPEAL

Plaintiff's Gregory Carson, Wilbert Skipper, Melvyn Connor, William Ingram, David Newman, Anthony Blocker, Maurice Mathews, W. Kirb Qualls, John Dallas and David Jones ("Plaintiffs") hereby move this Court To Stay the district court's Order pertaining to the Consolidated Notice of Appeal in the above captioned matters pursuant to fed. R. Civ. Proc. 59.

In support of this motion, Plaintiffs state the following:

1. That the Court on February 20, 2002 in the matter of Carson et. Al. v. Giant Food Inc. et. al JFM96-2882 "Carson Matter") dismissed the above Plaintiffs' claims by way of the defendants' notions for summary judgments.

2. After dismissing the Plaintiffs' claims, this Court also bifurcated the above named plaintiffs from the Carson matter and opened eight (8) new cases with

separate final orders in each of the above Plaintiffs' respective cases.

3. This Court also issued an Opinion and Order in Carson, which allowed Plaintiffs to file a consolidated notice of appeal if more than one plaintiff fled an appeal to the Fourth Circuit Court of Appeals.

4. The above nine plaintiffs therefore filed a consolidated notice of appeal on March 19, 2002 to the Fourth Circuit Court of Appeals.

5. However, on March 25, 2002, this Court entered and Order characterizing Plaintiffs' "Consolidated Notice of Appeal" as an "interlocutory appeal" because them is still pending litigation in the Carson matter. See Exh. 1, Specifically, Plaintiff Gregory Carson is scheduled to got to trial on May 20, 2002 to litigate and try before a jury his one (1) remaining claim, namely that he was subjected to a "racially hostile work environment".

6. Also pending before the fourth Circuit Court of Appeals is the sister class action to the Carson Matter, namely Muhammad et. al. v. Giant Food Inc. et, al JFM98-3565.

7. The Carson Plaintiffs and Muhammad Plaintiffs are raising some of the same and identical claims and issues on appeal. Oral argument was heard in Muhammad on January 22, 2002. No decision has been rendered in Muhammad.

8. Inasmuch that this Court has characterized the Consolidated Notice of Appeal: (1) as being

interlocutory; (2) Plaintiff Carson still has one remaining claim to resolve before a jury on May 20, 2002 and (3) Plaintiffs will be fling a motion to stay and place in abeyance this Consolidated Notice of Appeal fn1 because the Fourth Circuit Court of Appeals is still deliberating in Muhammad et. Al. v. Giant Food Inc JFM98-3565, which has some of the same and identical issues in the above Plaintiffs' Appeal, plaintiffs respectfully move the district court to alter, amend and stay its March 25, 2002 order.

A stay of the Court's March 25, 2002 order would preserve judicial economy and efficiency and prevent the parties from engaging in any needless appellate procedures until the Muhammad Matter on appeal is resolved and the one claim of Plaintiff Gregory Carson is resolved. The defendants would not be harmed by a stay in this matter because the court has characterized the consolidated notice of appeal as interlocutory, which means that even though this court entered separate and distinct final orders for each plaintiff, none had to take an appeal at this time but could have waited until lead Plaintiff Gregory Carson's "Hostile Work Environment" claim had been tried by a jury on May 20, 2002. By staying the appeal it would also eliminate a lot of confusion, unnecessary expense and time for the parties and both courts. Also, the parties could marshal both their time and efforts more effectively in preparing for trial on Plaintiff Gregory Carson's "Hostile Work Environment" claim scheduled for May 20, 2002, which is only approximately five (5) weeks away. Plaintiffs will be fling a formal motion to stay and place in abeyance their Consolidated Notice of Appeal in the Fourth Circuit on April 10, 2002.

Moreover, after receiving this Court's March 25, 2002 order Plaintiffs wrote to the defendants to seek their consent and or concurrence on fling a motion to stay Plaintiffs' appeal. See Exh. 2. At this time the defendants have not responded to Plaintiffs' letter dated March 29, 2002 seeking their consent to this motion. Thus Plaintiffs can only represent to this Court that it is assumed that defendants do not agree to a stay of this matter in the Fourth Circuit or of the district court's March 25, 2002 Order.

Wherefore having shown (1) just and good cause; (2) that the staying of the courts order until: (a) the Fourth Circuit Court of Appeals rule on the Plaintiffs' Motion To Stay and Place in Abeyance their Consolidated Appeal and (b) until Plaintiff Gregory Carson's trial on his "hostile work environment" claim is tried and concluded and (3) that a stay at this time would not harm nor prejudice either party, this Court should grant the Plaintiffs' motion Alter, amend and stay its order dated March 25, 2002. See Exh. l.

Respectfully Submitted,

Jo Ann P. Myles
Law Office of Jo Ann P. Myles
1300 Mercantile Lane
Suite 139-S
Largo, Maryland 20774
Bar No. 04412
301 -474-0261

Dated: April 8, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 8th of April 2002 I had mailed by postage prepaid Plaintiffs Skipper, Connor, Ingram, Newman, Blocker, Mathews, Qualls, Dallas and Jones, Consolidated Motion To Alter, Amend and Stay The Court's Order Dated March 25, 2002 To Defendants Counsel:

Robert Watkins, Esquire
Kumiki Gibson, Esquire
Williams & Connolly LLP
725 Twelfth Street N.W.
Washington, D.C. 2005

Jo Ann P. Myles

Footnotes

fn1 Plaintiffs Wilbert Skipper, Melvyn Connor, William Ingram, David Newman, Anthony Blocker, Maurice Mathews, W. Kirb Qualls, John Dallas and David Jones will be filing a Motion To Stay and Place in Abeyance their Appeal in the Fourth Circuit Court of Appeals on Wednesday, April 10, 2002.

2/20/02	312	ORDER granting [300-1] motion of plaintiffs for Sanctions. Giant is directed to pay $25,000 to Plaintiffs. (signed by Judge J. F. Motz 2/20/02) (c/i 2/20/02) (sf) [1:96cv2882]
2/20/02	313	ORDER denying [246-1] motion of plaintiffs for Class Certification, denying [246-2] motion of plaintiffs for Preliminary Injunction Relief, denying [246-3] motion of plaintiffs for Bifurcation of liability and damages trials granting in part, denying in part [235-1] motion of defendants for Summary Judgment as to Gregory Carson granting [243-1] motion of defendants for Summary Judgment as to Pete Manos, Sam Thurston, Maria Myers, Robert Haywood, Deborah Lilly, Chirs Balodemas, and Tom Maynard, granting [242-1] motion of defendant for Summary Judgment as to Wilbert Skipper, Jr, granting [241-1] motion of defendant for summary Judgment as to Willie Kirb Qualls, granting [240-1] motion of defendant for Summary Judgment as to Jerry Mungro, granting [239-1] motion of defendant for Summary Judgment as to Maurice Mathews, granting [238-1] motion of defendant for Summary Judgment as to William Ingram, granting [237-1] motion of defendant for Summary Judgment as to John

Dallas, Jr. and David Jones, granting [236-1] motion of defendant far Summary Judgment as to Melvyn Connor, granting [234-1] motion of defendant for Summary Judgment as to David A. Newman, granting [233-1] motion of defendant far Summary Judgment as to Anthony Blocker. The Clerk is directed to open nine new case in eight of which each of the plaintiffs in this action, other than Gregory Carson, John Dallas, Jr., and David Jones, is named as the plaintiff, and in the ninth of which John Dallas, Jr. and David Jones are named as the plaintiffs; provided, however, that in the event of an appeal by more than one plaintiff, the cases shall be consolidated and only one filing fee need be paid. (signed by Judge J. F. Motz 2/20/02) (c/i 2/20/02) (sf) [1:96cv2882]

2/26/02 314 Letter MOTION by Gregory Carson, David Newman and Anthony Blocker to Amend [312-1] order (c/s) (sf) [1:96cv2882]

2/27/02 315 RESPONSE by Giant Food, Inc. in opposition to [314-1] motion to Amend [312-1] order by Gregory Carson and exhibits A-G. (c/s) (sf) [1:96cv2882]

3/1/02 316 ORDER, Confirming the schedule set during the confrence held on 3/1/02.

(signed by Judge J. F. Motz 3/1/02) (c/i 3/1/02) (sf) [1:96cv2882]

3/8/02	317	REPLY by Gregory Carson to response to [314-1] motion to Amend [312-1] order by Gregory Carson (c/s) (sf) [Entry date 03/11/02] [1:96cv2882]
3/19/02	318	Interlocutory NOTICE OF APPEAL by David Jones, John W. Dallas Jr., W. Kirb Qualls Jr., Maurice Mathews, Anthony Blocker, David Newman, William Ingram, Melvyn Connors, Wilbert Skipper Jr, with attachments 1 thru 9. Fee Status: (Filing Fee Paid) (c/m: A. Robinson, B. Amini, S. Botts, X. Aragona, J. Myles, O. Amorow, R. Clark, W. R. Watkins, J. Hilden, K. Gibson, K. Jennings, K. Adler, J. Smith, M. London, M. Stefan, C. Butsavage) (c/s) (ko) [Entry date 03/20/02] [Edit date 03/20/02] [1:96cv2882]
3/20/02	--	Consolidated Lead Case (sf) [1:96cv2882]
3/21/02	--	Interlocutory Notice of appeal, and certified copy of docket to USCA: [318-1] appeal by Wilbert Skipper Jr., Melvyn Connors, William Ingram, David Newman, Anthony Blocker, Maurice Mathews, W. Kirb Qualls Jr., John W. Dallas Jr., David (c/m) (ko) [1:96cv2882]

3/25/02	319	ORDER DIRECTING the interlocutory notice of appeal by Plaintiffs and any transcripts which may be ordered for the purposes of appeal are excepted from this Order and will be transmitted to the USCA together with a copy of this Order, docket entries and copies of such pleadings as the parties may designate, such copies to be furnished by the parties with 2 weeks from the date of this Order. (signed by Judge J. F. Motz 3/25/02) (c/m & USCA 3/25/02 ko) (ko) [Entry date 03/26/02] [1:96cv2882]
3/28/02	--	USCA Case Number Re: [318-1] appeal by Wilbert Skipper Jr., Melvyn Connors, William Ingram, David Newman, Anthony Blocker, Maurice Mathews, W. Kirb Qualls Jr., John W. Dallas Jr., David Jones USCA NUMBER: 02-1319 (Case Manager: Carina Ida) (ko) [1:96cv2882]
3/28/02	320	MOTION with memorandum in support by Giant Food, Inc. in 1:96-cv-02882 to interview Ex Parte African-American Employeesand exhibit A. (c/s) (sf) [1:96cv2882]
4/1/02	321	Letter MOTION for Carey R. Butsavage to withdraw as Attorney, for Marc A. Stefan to Withdraw as Attorney (sf) [1:96cv2882]

4/1/02	422	ORDER granting [321-1] motion for Carey R. Butsavage to Withdraw as Attorney (Terminated attorney Carey R. Butsavage for UFCW Local 400 , attorney Marc A. 5tefan for UFCW Local 400 , granting [321-2] motion for Marc A. Stefan to Withdraw as Attorney (Terminated Marc A. Stefan) (signed by Judge J. F. Motz 4/1/02) (c/i 4/1/02) (sf) [1:96cv2882]
4/3/02	322	MEMORANDUM OPINION (signed by Judge J. F. Motz 4/2/02) (c/i 4/3/02) (sf) [1:96cv2882]
4/3/02	323	ORDERED, that the clerk is directed to file the attached 2/24/02 letter from plaintiffs counsel to the court as a motion to alter and amend the ruling made by this court on 2/20/02. The motion is denied; and the $25,000 award should be paid in accordance with the procedure set forth in. the accompanying Memorandum. (signed by Judge J. F. Motz 4/2/02) (c/i 4/3/02) (c/m) (sf) [1:96cv2882]
4/3/02	324	Letter MOTION by Gregory Carson in 1:96-cv-02882 to Amend or alter [312-1] order (sf) [1:96cv2882]
4/8/02	325	MOTION by Gregory Carson, Skipper, Connor, Ingram, Newman, Blocker, Mathews, Qualls, Dallas and Jones to Alter, Amend and to Stay [319-1] order

concerning plaintiffs consolidated Notice of Appeal (c/s) (sf) [Entry date 04/09/02] [1:96cv2882]

4/9/02	326	SUPPLEMENTAL CONSOLIDATED NOTICE OF APPEAL by David Jones in 1:96-cv-02882, John W. Dallas Jr. in 1:96-cv-02882, W. Kirb Qualls Jr. in 1:96-cv-02882, Maurice Mathews in 1:96-cv-02882, Anthony Blocker in 1:96-cv-02882, David Newman in 1-96-cv-02882, William Ingram in 1:96-cv-02882, Melvyn Connors in 1:96-cv-02882, Wilbert Skipper Jr. in 1:96-cv-02882. Fee Status: (Fee Not Required) (c/m: X. Aragona,, W. Jacobs, O. Amorow, J. Hilden, K. Gibson, R. Watkins, K. Jennings, K. Adler, J. Smith, M. London, R. Clark, S. Botts, A. Robinson, J. Myles, and B. Amini) (c/s) (ko) [Entry date 04/10/02] [Edit date 06/07/02] [1 : 96cv2882]
4/10/02	--	Supplemental Consolidated Notice of appeal and certified copy of docket to USCA: [326-1] appeal by Wilbert Skipper Jr., Melvyn Connors, William Ingram, David Newman, Anthony Blocker, Maurice Mathews, W. Kirb Qualls Jr., John W. Dallas Jr., David (c/m) (ko) [1:96cv2882]
4/11/02	327	RESPONSE by Gregory Carson in 1:96-cv-02882 in opposition to [320-1]

motion to interview Ex Parte African-American Employees by Giant Food, Inc. (c/s) (sf) [Entry date 04/15/02] [1:96cv2882]

4/17/02 328 REPLY by Giant Food, Inc. in 1:96-cv-02882 to response to [320-1] motion to interview Ex Parte African-American Employees by Giant Food, Inc. (c/s) (sf) [1:96cv2882]

4/17/02 329 MOTION with memorandum in support by Giant Food, Inc. in 1:96-cv-02882 in Limine to exclude evidence related to previously decided issues, including specifically certain evidence identified in plaintiff's proposed pretrial order and exhibit A-D. (c/s) (sf) [1:96cv2882]

4/17/02 330 MOTION with memorandum in support by Giant Food, Inc. in 1:96-cv-02880 in Limine to exclude evidence related to plaintiff's request for punitive damages (c/s) (sf) [1:96cv2882]

4/17/02 331 RESPONSE by Giant Food, Inc. in 1:96-cv-02882 in opposition to [325-1] motion to Alter, Amend and to Stay [319-1] order concerning plaintiffs consolidated Notice of Appeal by Gregory Carson (c/s) (sf) [1:96cv2882]

4/17/02	332	Proposed pre-trial order submitted by Giant Food, Inc. Gregory Carson (c/s) (sf) [Entry date 04/19/02] [1:96cv2882]
4/19/02	333	ORDER CONFIRMING schedule set during the conference today(signed by Judge J. F. Motz 4/19/02) (c/i 4/19/02) (sf) [1:96cv2882]
4/18/02	334	ORDER granting [320-1] motion of defendant to interview Ex Parte African-American Employees granting [325-1] motion of plaintiff to Amend and to Stay [319-1] order concerning plaintiffs consolidated Notice of Appeal. (signed by Judge J. F. Motz 4/19/02. (c/i 4/19/02) (sf) [1:96cv2882]
4/23/02	335	TRANSCRIPT filed [326-1] appeal by Wilbert Skipper Jr., Melvyn Connors, William Ingram, David Newman, Anthony Blocker, Maurice Mathews, W. Kirb Qualls Jr., John W. Dallas Jr., David Jones, [318-1] appeal by Wilbert Skipper Jr., Melvyn Connors, William Ingram, David Newman, Anthony Blocker, Maurice Mathews, W. Kirb Qualls Jr., John W. Dallas Jr., David Jones for dates of 1/15/02 (Court Reporter: Mary Zajac) (FILED SEPARATELY) (ko) [1:96cv2882]
4/24/02	336	AMENDED ORDER REAFFIRMING paragraph 1 of the order entered on 4/19/02 granting [320-

1] motion of Giant Food to interview Ex Parte African-American Employees, granting [325-1] motion to Alter, Amend and to Stay [319-1] order concerning plaintiffs consolidated Notice of Appeal signed by Judge J. F. Motz) (c/i 4/25/02) (jl) [Entry date 04/25/021 [1:96cv2882]

4/24/02 337 SUPPLEMENTAL MEMORANDUM by Giant Food, Inc. in support of their [329-1] motion in Limine to exclude evidence related to previously decided issues, including specifically certain evidence identified in plaintiff's proposed pretrial order and Attachments A-G (c/s) (jl) [Entry date 04/25/02] [1:96cv2882]

4/29/02 338 MOTION with memorandum in support by Gregory Carson for Leave to File supplement to the Amended Complaint and proposed Supplement. (c/s) (sf) [Entry date 04/30/021 [Edit date 05/03/02] [1:96cv2882]

5/1/02 339 MOTION by Gregory Carson in Limine to Exclude Evidence Including Specifically Certain Evidence Identified in the Proposed Pretrial Order (c/s) (sf) [Entry date 05/02/02] [Edit date 05/03/02] [1:96cv2882]

5/1/02 340 RESPONSE by Gregory Carson in 1:96-cv-02882 in opposition to [330-1] motion in Limine to exclude evidence related to plaintiff's request for punitive damages by Giant Food, Inc. (c/s) (sf) [Entry date 05/02/02] [Edit date 05/03/02] [1:96cv2882]

5/1/02 341 RESPONSE by Gregory Carson in 1:96-cv-02882 in opposition to [329-1] motion in Limine to exclude evidence related to previously decided issues, including specifically certain evidence identified in plaintiff's proposed pretrial order by Giant Food, Inc. (c/s) (sf) [Entry date 05/02/02] [Edit date 05/03/02] [1:96cv2882]

5/3/02 342 RESPONSE by Giant Food, Inc. in 1:96-cv-02882 in opposition. to [338-1] motion for Leave to File supplement to the Amended Complaint by Gregory Carson (c/s) (sf) [1:96cv2882]

5/10/02 343 STATUS REPORT by Giant Food, Inc. on compliance with the Court's 4/2/02 order regarding the payment of certain expert fees and costs and Attachments A-C (c/s) (jl) [Edit date 05/10/02] [1:96cv2882]

5/10/02 344 REPLY MEMORANDUM by Giant Food, Inc. in support of their [330-1] motion in Limine to exclude evidence related to plaintiff's request for

punitive damages (c/s) (jl) [1:96cv2882]

5/10/02	345	REPLY MEMORANDUM by Giant Food, Inc. in support of their [329-1] motion in Limine to exclude evidence related to previously decided issues, including specifically certain evidence identified in plaintiff's proposed pretrial order and Attachments A-B (c/s) (jl) [1:96cv2882]
5/10/02	346	RESPONSE by Giant Food, Inc. in opposition, to [339-1] motion in Limine to Exclude Evidence Including Specifically Certain Evidence Identified in the proposed Pretrial Order by Gregory Carson (c/s) (jl) [1:96cv2882]
5/13/02	347	ORDER DISMISSING Case with each party to bear its own costs unless otherwise agreed without prejudice to the right of a party to move for good cause within 30 days to reopen this action if settlement is not consummated. (signed by Judge J. F. Motz 5/13/02) (c/i 5/13/02) (MICROFILMED 5/13/02) (sf) [1:96cv2882]
5/13/02	--	Case closed (sf) [1:96cv2882]
5/24/02	248	NOTICE OF DISMISSAL AND ORDER, that all claims be dismissed with prejudice and costs shall be

adjusted between the parties in accordance with their agreement. (signed by Judge J. F. Motz 5/22/02) (c/i & microfilmed 5/24/02) (sf)

No. 02-1310
CA-96-2882-JFM
CA-02-537-JFM
CA-02-538-JFM
CA-02-539-JFM
CA-02-540-JFM
CA-02-541-JFM
CA-02-542-JFM
CA-02-543-JFM
CA-02-544-JFM

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

WILBERT SKIPPER, JR.; MELVYN CONNORS; WILLIAM INGRAM; DAVID NEWMAN; ANTHONY BLOCKER; MAURICE MATHEWS; W. KIRB QUALLS, JR.; JOHN W. DALLAS, JR.; DAVID JONES
Plaintiffs - Appellants

and

GREGORY CARSON; JERRY MUNGRO
Plaintiffs

v.

GIANT FOOD INCORPORATED; PETER MANOS, in his official capacity; SAMUEL THURSTON, in his official capacity; MARIA MYERS, in her official capacity; ROBERT HAYWOOD, in his official capacity; DEBORAH LILLY, in her official capacity; TOM MAYNARD, in his official capacity; CHRIS BALLADEMAS, in his official. capacity

Defendants - Appellees

And

UNITED FOOD & COMMERCIAL
WORKERS UNION, Local 400
Party in Interest

Filed May 28, 2002

ORDER

Appellants have filed a motion for stay appeal. Appellees have filed opositions to the motion. Appellants have filed replies.

The Court denies the motion.

For the Court,
/s/
Patricia S. Connor
CLERK